

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARNO SUTTON,

Plaintiff,

vs.

MICHAEL BLOCK, et al.,

Defendants.

Civil Action No.
06-CV-12389

HON. BERNARD A. FRIEDMAN

**OPINION AND ORDER GRANTING DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT**

This matter is presently before the court on the motion of defendants Block, Wallison and Crawford for summary judgment [docket entry 26]. Magistrate Judge Donald A. Scheer has submitted a Report and Recommendation (“R&R”) in which he recommends that the motion be granted. Plaintiff has filed objections to the R&R. For the following reasons, the court shall accept the magistrate judge’s recommendation and grant summary judgment for defendants Block, Wallison and Crawford. In addition, the court shall dismiss the complaint as frivolous as to defendants Yaklyvich and Cook.

Plaintiff is a prison inmate in the custody of the Michigan Department of Corrections. His *pro se* complaint asserts two claims. “Claim 1” is that on May 25, 2004, “I was taken out of a prison cell and told by Officer Steven Yaklyvich to go into another inmates cell, and take all of his clothes off then drag him into the housing unit hallway.” Complaint, p. 2. Another officer, defendant Michael Block, allegedly let plaintiff and five other inmates into the cell of the inmate who was to be stripped. Plaintiff alleges he followed Yaklyvich’s instructions and that subsequently

he was placed in segregation and transferred from the Macomb Correctional Facility to another prison.

Plaintiff's "Claim 2" is that upon being retransferred to the Macomb facility he "was taken to the Segregation Unit, and assaulted by officer Wallison, and Sergeant Crawford." Complaint, p. 3. Defendant Cook, the assistant deputy warden of the Macomb facility, allegedly oversaw plaintiff's transfer. Plaintiff also alleges he "was unduly punished, by being placed in Segregation." *Id.*

In addition to the reasons provided in the magistrate judge's R&R, all of which the court accepts, the court notes the following additional reasons for disposing of this case. As to Claim 1, plaintiff has failed to state a claim upon which relief can be granted. The gist of the claim is that plaintiff was transferred as a disciplinary sanction for having abused another inmate, as directed by Yaklyvich who was assisted by Block. As deplorable as Yaklyvich's and Block's behavior may be, plaintiff knew or should have known that Yaklyvich's "order" was unlawful and that he could not be disciplined for disobeying it. Having chosen to obey the unlawful order to abuse a fellow inmate, plaintiff has only himself to blame for any discipline he received. Moreover, plaintiff does not allege that Yaklyvich or Block were involved in making the decisions to place him in segregation or to transfer him to another prison. Absent an allegation of such direct, personal involvement, no claim is stated against these defendants based on plaintiff's placement in segregation or his transfer to another prison.

As to Claim 2, no claim is stated against defendant Cook, who allegedly did nothing except oversee plaintiff's transfer back to the Macomb facility. Nor does plaintiff allege that Cook or Wallison or Crawford were personally involved in the decision to place him in segregation. The

only potentially cognizable claim is that Wallison and Crawford “assaulted” him. For the reasons stated in the magistrate judge’s R&R, however, defendants are entitled to summary judgment on this claim. Accordingly,

IT IS ORDERED that Magistrate Judge Scheer’s Report and Recommendation is accepted and adopted and the findings and conclusions of the court.

IT IS FURTHER ORDERED that the motion of defendants Block, Wallison and Crawford for summary judgment is granted.

IT IS FURTHER ORDERED that all other pending motions [docket entries 6, 20, 21, 22, 24, 28] are denied as moot.

IT IS FURTHER ORDERED that the complaint is dismissed, pursuant to 28 U.S.C. § 1915(g)(2)(B)(ii), for failure to state a claim as to defendants Yaklyvich and Cook.

____s/Bernard A. Friedman_____
BERNARD A. FRIEDMAN
CHIEF UNITED STATES DISTRICT JUDGE

Dated: October 9, 2007
Detroit, Michigan